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**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE**

STATE OF UTAH

**IN THE MATTER OF THE LICENSES OF
WARREN R. STACK**
TO PRACTICE AS A PHYSICIAN
AND SURGEON AND TO ADMINISTER
AND PRESCRIBE CONTROLLED
SUBSTANCES IN THE STATE OF UTAH

EMERGENCY ORDER

Case No DOPL 2007- *122*

The Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (the "Division") initiated an Emergency Adjudicative Proceeding pursuant to Utah Code Ann § 63-46b-20 (West 2004), the Utah Administrative Procedures Act, Utah Code Ann § 58-1-108(2) (West 2004), the Division of Occupational and Professional Licensing Act, and Utah Administrative Code R151-46b-16, the Department of Commerce Administrative Procedures Act Rules. The Division initiated the Emergency Administrative Proceeding upon evidence that the continued practice of Warren R Stack represented an immediate and significant danger to the public health, safety, and welfare, and that the threat required immediate action by the agency.

Before taking this action, the Chair of the Physicians Licensing Board appointed a three-member committee to review with the Division the proposed action in this matter, pursuant to Utah Code Ann § 58-1-108(2)

Pursuant to the Open and Public Meetings Act, Utah Code Ann § 52-4-1, the Division provided notice of the meeting of the committee for 9 00 a m on May 25, 2007, at the Heber M Wells Building located at 160 East 300 South, Salt Lake City, Utah Notice of the meeting was also provided to the Salt Lake Tribune and Deseret News on May 22, 2007 Notice was also placed in the lobby of the Heber Wells Building Said meeting of the committee convened at said appointed date and time, reviewed the Division's proposed action, and made recommendations consistent with the following Findings of Fact, Conclusions of Law, and Emergency Order

The committee met at the appointed time and place The committee went into closed session pursuant to Utah Code Ann § 52-4-5(1)(a)(I) in order to discuss the professional competency of an individual The presiding committee member affirmed under oath that the meeting was closed for that purpose The Committee reviewed the Division's proposed action and considered information in the form of testimony, exhibits, and reports, as well as the information from the Division Investigator Having been fully informed supporting the proposed action, the committee made recommendations fully consistent with the following Findings of Fact, Conclusions of Law, and Order

FINDINGS OF FACT

1 Warren R Stack is currently licensed to practice as a Physician and Surgeon and to administer and prescribe controlled substances in the State of Utah

2 The Division, in conjunction with the U S Department of Justice, Drug Enforcement Administration and the Salt Lake County Sheriff's Office, has conducted an investigation of the medical practice of Warren R Stack

3 In and prior to 2007, Warren R Stack has maintained a private medical practice in Murray, Utah and at the Intermountain Cottonwood Hospital, 5770 South 300 East, Murray, Utah

4 Warren R Stack, in and prior to 2007 and in the course of his medical practice, has engaged in inappropriate pain management as evaluated by the criteria adopted in the "Model Policy for the Use of Controlled Substances for the Treatment of Pain," 2004, established by the Federation of State Medical Boards, where said criteria include Evaluation of the Patient, Treatment Plan, Informed Consent and Agreement for Treatment, Periodic Review, Consultation, Medical Records, and Compliance with Controlled Substance Laws and Regulations

5 Warren R Stack, by failing as a prescribing practitioner to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain," has engaged in unprofessional conduct as defined in Utah Admin Code R156-1-502(6)

6 Warren R Stack, in and prior to 2007 and in the course of his medical practice, has prescribed prescriptions for legend drugs and controlled substances in violation of the professional standards of practice and engaged in conduct including, but not limited to, initiating

1 medication for patients in high doses, increasing doses by large amounts, issuing prescriptions for doses of medications and in combinations of medications which are contraindicated, and issuing prescriptions without first obtaining information sufficient to establish a diagnosis, identify conditions, and identify contraindications to the proposed treatment Based upon the foregoing, investigations indicate that Warren R Stack has engaged in unprofessional conduct pursuant to Utah Code Ann § 58-1-501(2)(b), (g), and (m)

7 Warren R Stack, in and prior to 2007 and in the course of his medical practice, has prescribed controlled substances without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or to distribute to others, and the possibility of an illicit market for the drug in violation of the Utah Controlled Substances Act Rules, Utah Administrative Code R156-37-603

8 Warren R Stack, in and prior to 2007 and in the course of his medical practice, has failed to incorporate appropriate and adequate safeguards into his practice to minimize the potential for the abuse and diversion of controlled substances in violation of the "Model Policy for the Use of Controlled Substances for the Treatment of Pain" and Utah Admin Code R156-1-502(6)

9 Warren R Stack, in and prior to 2007 and in the course of his medical practice, has engaged in actions and communications which are false, misleading, deceptive, and/or fraudulent including, but not limited to, inclusion of false information and false representations in patient medical records and billing for medical services when the provision of said services is not supported by medical records Based upon the foregoing, investigations indicate that Warren

1

R Stack has engaged in unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(h) (West 2004)

10 The Division has determined that Warren R Stack's current behavior and course of practice pose an immediate and significant danger to the public health, safety, and welfare and require immediate action by the Division

11 The committee has addressed the following specific limitations on Warren R Stack's licenses to practice in an effort to limit its recommendations to require only the action necessary to prevent or avoid danger to the public health, safety, and welfare The facts found above are incorporated by reference

- a Warren R Stack has demonstrated a severe departure from the standard of care, competency, and skill that a Physician and Surgeon is required to maintain This behavior constitutes an immediate threat to the public health, safety, and welfare
- b The committee recommended that Warren R Stack's license to administer and prescribe controlled substances be immediately suspended and that Warren R Stack's license to practice as a Physician and Surgeon be immediately suspended The committee recommended that the suspension and restrictions continue pending a formal adjudication of the matters addressed in this proceeding

CONCLUSIONS OF LAW

1 The Division has jurisdiction and authority to act in this matter and has followed appropriate statutory procedures regarding the initiation of emergency adjudicative actions

2 Utah Code Ann § 63-46b-20 (West 2004) provides

- (1) An agency may issue an order on an emergency basis without complying with the requirements of this chapter if
 - (a) the facts known by the agency or presented to the agency show that an immediate and significant danger to the public health, safety, or welfare exists, and

(b) the threat requires immediate action by the agency

(2) In issuing its emergency order, the agency shall

(a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare,

(b) issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings, and

(c) give immediate notice to the persons who are required to comply with the order

(3) If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the agency shall commence a formal adjudicative proceeding in accordance with the other provisions of this chapter

3 Based on the recommendation of the committee and the evidence in support of this action, the Division has shown that the alleged actions of Warren R Stack constitute an immediate and significant danger to the public health, safety, and welfare and require immediate action to protect the public health, safety, and welfare

4 Warren R Stack, in and prior to 2007 and in the course of his medical practice, has engaged in inappropriate pain management as evaluated by the criteria adopted in the "Model Policy for the Use of Controlled Substances for the Treatment of Pain," 2004, established by the Federation of State Medical Boards, where said criteria include Evaluation of the Patient, Treatment Plan, Informed Consent and Agreement for Treatment, Periodic Review, Consultation, Medical Records, and Compliance with Controlled Substance Laws and Regulations

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10 This Order is necessary to prevent harm to the public pending a formal adjudication of the matters addressed in this proceeding Immediate action is necessary and this Order is the least restrictive action needed to prevent or avoid the danger to the public health, safety, or welfare

11 Warren R Stack may challenge the Order pursuant to Utah Admin, Code R151-46b-16 as follows

R151-46b-16 Emergency Adjudicative Proceedings Unless otherwise provided by statute or rule

- (1) When a division commences an emergency adjudicative proceeding and issues an order in accordance with Section 63-46b-20 which results in a continued impairment of the affected party's rights or legal interests, the division that issued the emergency order shall schedule a hearing upon written request of the affected party to determine whether the emergency order should be affirmed, set aside, or modified based on the standards set forth in Section 63-46b-20 The hearing will be conducted in conformity with Section 63-46b-8
- (2) Upon request for a hearing pursuant to this rule, the Division will conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of a written request unless the Division and the party requesting the hearing agree to conduct the hearing at a later date The

Division shall have the burden of proof to establish, by a preponderance of the evidence, that the requirements of Section 63-46b-20 have been met

- (3) Except as otherwise provided by statute, the division director or his designee shall select an individual or body of individuals to act as the presiding officer at the hearing. The presiding officer shall not include any individual who directly participated in issuing the emergency order
- (4) Within a reasonable time after the hearing, the presiding officer shall issue an order in accordance with the requirements of Section 63-46b-10. The order of the presiding officer shall be considered final agency action with respect to the emergency adjudicative proceeding and shall be subject to agency review in accordance with Section R151-46b-12

ORDER

1 The license of Warren R. Stack to practice as a Physician and Surgeon is immediately suspended until a hearing pursuant to Utah Code Ann. § 63-46b-20 (West 2004) and Utah Admin. Code R151-46b-16 is convened and a contravening order is issued, or a regular formal adjudicative hearing pursuant to Utah Code Ann. § 63-46b-1 et seq. is convened and a contravening order issued.

2 The license of Warren R. Stack to administer and prescribe controlled substances is immediately suspended until a hearing pursuant to Utah Code Ann. § 63-46b-20 (West 2004) and Utah Admin. Code R151-46b-16 is convened and a contravening order is issued, or a regular formal adjudicative hearing pursuant to Utah Code Ann. § 63-46b-1 et seq. is convened and a contravening order issued.

3 Warren R. Stack shall immediately cease and desist from the practice of medicine as a Physician and Surgeon and from administration and prescription of controlled substances until a hearing pursuant to Utah Code Ann. § 63-46b-20 (West 2004) and Utah Admin. Code R151-46b-16 is convened and a contravening order is issued, or a regular formal

adjudicative hearing pursuant to Utah Code Ann § 63-46b-1 et seq is convened and a contravening order issued


4 The Division shall commence a formal adjudicative proceeding against Warren R Stack in accordance with the Division's statutes and rules

RIGHT TO REVIEW

1 In accordance with Utah Admin Code R151-46b-16, the Division will schedule a hearing upon receipt of a written request from Warren R Stack At the hearing it will be determined whether the Emergency Order should be affirmed, set aside, or modified, based on the standards set forth in Utah Code Ann § 63-46b-20 The hearing will be conducted in conformity with Utah Code Ann § 63-46b-8

2 Upon receipt of a request for hearing pursuant to Utah Admin Code R151-46b-16, the Division will conduct a hearing as soon as reasonably practical, but not later than twenty (20) days from receipt of a written request, unless the Division and the party requesting the hearing agree to conduct the hearing at a later date

DATED this 25th day of May, 2007



LAURA POE
Presiding Officer
Bureau Manager, Division of Occupational and
Professional Licensing